IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9646 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HINDUSTAN COAL MOVERS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9646 of 2000

MR MIHIR H JOSHI for Petitioner No. 1-2

MR ASIM J PANDYA for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article

226 of the Constitution is the order dated 7.9.2000 (Annexure "R") passed by the Superintendent of Customs CH, Okha regarding payment of anti-dumping duty in respect of Bill of Entry No.F-42/12.10.99 of Chinese Metcoke imported by the petitioner at Okha port and also the order dated 2.8.2000 (Annexure "N") passed by the Superintendent of Customs, C.H., Okha regarding payment of anti-dumping duty in respect of Bill of Entry No.F/67 and F/68 dated 25.1.2000 of Chinese Metcoke imported at Okha port.

2. In view of the order that we propose to pass, it is not necessary to set out all the facts in detail because apart from the challenge to the orders on merits, the petitioner has challenged both the orders also on the ground that the orders were passed by the Superintendent of Customs without giving the petitioner an opportunity of being heard and without issuing any notice to the petitioner.

3. When the first consignment covered by the Bill of Entry No.42 dated 12.10.1999 arrived at Okha port on 12.10.1999, the petitioner was required to pay anti-dumping duty on the basis of the Government notification dated 27.10.1998 which provided that the anti-dumping duty of Metcoke imported from China shall be the difference between Rs.4673 and the landed price of the commodity. The petitioner had produced the invoice indicating that the Metcoke was purchased at US $ 92 per MT and, therefore, the anti-dumping duty was required to be levied accordingly. However, the authorities determined the landed price of the commodity at the rate of US $ 65 per MT and on that basis demanded differential anti-dumping duty of Rs.80,60,000/-, over and above, the anti-dumping already paid by the petitioner at the rate of Rs.4673 per MT less landed price of Metcoke per MT. The petitioner was permitted to clear the first consignment only after the petitioner gave the bank guarantee dated 23.10.1999 upon provisional assessment of the differential anti-dumping duty.

The petitioner thereafter imported two more consignments of Metcoke from China. The consignments arrived at Okha port in January 2000 and just before the time of landing of the consignments at Port Okha, the petitioner filed Special Civil Application No.167 of 2000 praying for direction to the respondents to permit the petitioner to clear the two incoming consignments by paying anti-dumping duty on the basis of the invoice price. Ultimately, that petition came to be disposed of by this Court's order dated 4.7.2000. After considering

the rival submissions, this Court allowed the petition in terms of the following directions:-

> "In view of these facts and circumstances, we direct the Union of India to release the goods on taking a bond from the petitioners and we further direct the petitioners to file an undertaking in this Court. We further direct that the exercise of assessment will be completed by the Revenue officers within a period of 15 days from the date of receipt of the writ. The undertaking shall be filed by all Directors of the Company within a week. At the time of making assessment, the observations made by this Court in this judgment shall not be born in mind by the Proper Officer and he shall make assessment independently without being influenced by the order passed by this Court.
>
> Copy of undertakings filed in this Court shall be given to the counsel for the Union of India and the officer concerned under the signature of learned advocate on record.
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> The petition stands allowed. Rule is made absolute accordingly."

It appears that without issuing any notice to the petitioner or without giving the petitioner any opportunity of being heard, the Superintendent of Customs at Okha passed the impugned orders on 2.8.2000 (Annexure "N") and 7.9.2000 (Annexure "R") calling upon the petitioner to pay anti-dumping duty as under:-

Bill of Entry No.	Differential amount of anti-dumping duty demanded (Rs.)	Date of the order	Annexure
F-42	77,83,809	7.9.2000	R
F-67	83,77,622	2.8.2000	N
F-68	42,22,190	2.8.2000	N

4. The above orders are challenged firstly on the ground that the orders were passed without issuing any notice or without giving any opportunity of hearing to the petitioner and secondly also on the ground that when the goods in question were imported on

12.10.1999/19.1.2000, the only notification in force levying anti-dumping duty was dated 27.10.1998 and, therefore, the authority could not have demanded any duty which was not computed in accordance with the said notification dated 27.10.1998. It is submitted that the differential anti-dumping duty has been demanded on the basis of the Government notification dated 19.5.2000, which was issued after the date of imports.

5. On the other hand, the learned Additional Standing Counsel for the Central Government has submitted that the impugned orders are passed on the basis of the Government notification dated 19.5.2000 which in turn was issued on the basis of the CEGAT's judgment dated 21.1.2000 as reported in (2000) 116 ELT 67 by which the CEGAT had held that the anti-dumping duty was required to be levied in case of imports from exporters of China other than the specified exporters at the rate of US $ 24.95 per MT. It is also submitted that the said judgment was rendered in an appeal against the notification dated 27.10.1998 which was passed on the final findings dated 27.8.1998 and, therefore, the authorities were justified in levying and demanding differential anti-dumping duty on the goods imported on 12.10.1999 and 19.1.2000 on the basis of the CEGAT judgment which was embodied in the Government notification dated 19.5.2000.

6. In rejoinder, Mr Joshi, learned counsel for the petitioner points out that the CEGAT appeal was only against final findings dated 27.8.1998 as indicated in the CEGAT judgment dated 21.1.2000 and when that judgment was challenged, the Apex Court dismissed the appeal on the ground that the final findings of the Designated Authority, which were modified by the CEGAT, were only recommendatory and that no notification was issued and, therefore, after the said Supreme Court order dated 11.5.2000, the Government issued the notification dated 19.5.2000 and, therefore, it is only the imports made on or after 19.5.2000 which are subject to levy of the anti-dumping duty at the rate of US $ 24.95.

7. It is also brought to our notice that subsequently Special Leave to Appeal Civil Nos.9423-9432/2000 were filed by Tata Chemicals Ltd. before the Hon'ble Supreme Court for challenging the above CEGAT order dated 21.1.2000 on the same controversy about anti-dumping duty on Metcoke from China and the Apex Court has passed the following order dated 24.8.2000 in the said SLPs:-

"Amendment allowed.

The Office Report draws our attention to order dated 10th May, 2000 in S.L.P (C) Nos.8203-8212/2000 (M/s. Saurashtra Chemicals Ltd. vs. Union of India 4 Ors.) filed against the judgment and order dated 21st January 2000 of CEGAT: In the said order, the SLPs were dismissed with the observations that the orders of the Designated Authority were recommendatory; that an appeal lay against the determination; and that determination had yet to be made by the Central Government.

"Mr Chidambaram draws our attention to the appeal which was filed before the CEGAT. The said appeal was filed not only against the determination of the Designated Authority but was filed also against the Custom Notification dated 27th October, 1998 whereby anti-dumping duty was imposed. This aspect was apparently not brought to the notice of this Court when it passed the Order dated 11th May 2000 and the order of CEGAT itself do not refer to the Customs Notifications dated 27th October, 1998 and i.e. why, probably, the Court was led to believe that the appeal had been filed before the issuance of the Notifications of determination.

It is clear from the facts brought to our notice that determination as contemplated by Rule 18 had taken place with the issuance of the Notification dated 27th October, 1998 and, therefore, an appeal u/s.9C would be maintainable to CEGAT."

Issue notice returnable after four weeks. Dasti service, in addition, is permitted."

However, the learned counsel do not have any subsequent order passed by the Hon'ble Supreme Court in the aforesaid proceedings.

8. Having heard the learned counsel for the parties, we are of the view that since the impugned orders dated 2.8.2000 (Annexure "N") and 7.9.2000 (Annexure "R") were passed by the authorities without issuing any notice or without giving any opportunity of hearing to the petitioner, the same are required to be set aside on the ground that there was violation of principles of natural justice.

As regards the contention of Mr Pandya for the respondent-authorities that the hearing would not serve any purpose as the authority is required to levy anti-dumping duty at the rate of US $ 24.95 PMT in view of the CEGAT judgment dated 21.1.2000, we prefer not to express any opinion. In our view, the issue is arguable and the petitioner should have an opportunity to raise all available contentions before the authority which will take a fresh decision in the matter after issuing the notice and after giving an opportunity of hearing to the petitioner.

9. The petition is accordingly allowed. The impugned orders dated 2.8.2000 (Annexure "N") and 7.9.2000 (Annexure "R") are quashed and set aside with liberty to the respondent-authorities to take a fresh decision in the matter after issuing notice and giving an opportunity of hearing to the petitioner.
Rule is made absolute.

10. At this stage, Mr Joshi learned counsel for the petitioner points out that the bank guarantee dated 23.10.1999 which the petitioner was compelled to give while importing goods under Bill of Entry No.F/42 dated 12.10.1999 has already lapsed in the year 2001 and that purshis to that effect was already filed on 14.9.2001, but because there is no order of the respondent-authority for returning the said bank guarantee, the petitioner's bankers require the petitioner to maintain the deposit of the full amount of the bank guarantee and the petitioner is facing serious economic hardship on account of the said situation. The petitioner may, therefore, be granted suitable relief in this behalf. Mr Joshi points out that the other two consignments in case of this very petitioner were permitted to be cleared only on giving the bond and the undertaking and, therefore, there is no justification for saddling the petitioner with liability to renew the said bank guarantee. It is also submitted that in no other case of import of Metcoke from China, the importer is required to give any bank guarantee for covering the anticipated anti-dumping duty.

11. In view of the above, in the facts and circumstances of the case, we are of the view that it would be in the fitness of things if the respondent-authorities are directed to return the bank guarantee earlier given by the petitioner in relation to Bill of Entry No.F/42 dated 12.10.1999 within three working days after the petitioner furnishes a bond for the amount of bank guarantee and after the petitioner files an undertaking before this Court that the

petitioner shall pay such amount of differential anti-dumping duty as is finally determined, without prejudice to the petitioner's right to challenge such determination.

It is directed accordingly.
Direct Service is permitted.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
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